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SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

No. 82-6192

SAMMY DAVID ROBERTS, Petitioner,

versus

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF Brief in Opposition HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING 3 COPIES IN AN ENVELOPE PROPERLY ADDRESSED WITH POSTAGE PREPAID THIS 23rd DAY OF March, 1983

Brian P. Gibbes
ATTORNEY FOR Respondent

SWORN TO BEFORE ME THIS 23rd DAY OF March, 1983

Marla J. Howard (L.S.)
Notary Public for South Carolina
My Commission Expires 5/26/86

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QUESTION PRESENTED

Was the sentencing jury properly instructed, and did it apply the proper standard of proof in determining Petitioner's sentence of death?

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OPINION BELOW

The opinion of the South Carolina Supreme Court is reported in Opinion No. 21808, filed November 10, 1982, as reproduced in Petitioner's Appendix A.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

Was the sentencing jury properly instructed, and did it apply the proper standard of proof in determining Petitioner's sentence of death?

ARGUMENT

I.

The sentencing jury was properly instructed, and applied the proper standard of proof in determining Petitioner's sentence of death.

Petitioner would have this Court believe that the South Carolina Supreme Court has not recognized the standard to be applied in a sentencing jury's final determination of sentence at the end of the second phase of a bifurcated capital trial. He, in fact, contends that the Court has refused to recognize any standard, conceding that if it has such would render the statute constitutional under his reasoning, and contends that the sentencing jury in his case received no guidance and had unfettered discretion in arriving at his sentence of death.

However, the opinion of the South Carolina Supreme Court on this point definitively disposes of this argument:

> Appellants next argue the trial judge should have instructed the jury that they must find the death penalty is appropriate beyond a reasonable doubt. The trial judge repeatedly instructed the jurors they must find the existence of a statutory aggravating circumstance beyond a reasonable doubt before they could impose the death penalty. He further instructed the jurors that they could recommend a sentence of life imprisonment even if they found the existence of a statutory aggravating circumstance beyond a reasonable doubt. The jurors must have had the phrase "beyond a reasonable doubt" firmly etched in their minds at this point in the bifurcated trial. Surely, Appellants would not have us believe a person of ordinary sensibilities would recommend imposition of the death penalty if he had a reasonable doubt that it was an appropriate sentence

in that case. This exception is frivolous and without merit. State v. Copeland and Roberts, Op. No. 21808 (filed November 10, 1982) and attached as an Appendix to the Petition for Writ of Certiorari.

Respondent respectfully submits that this Petition, in failing to recognize the clear language of the South Carolina Supreme Court, has become even more frivolous and without merit. Hence, it should be dismissed.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

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